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EXAMINER

MADSEN, ROBERT A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/519,999
Filing Date: March 6, 2000
Appellant(s): OZAWA

Kenneth M. Berner
For Appellant

MAILED

OCT 20 2004

GROUP 1700

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 15, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that the claims do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

JP 03-136614	OOYAMA	6-1991
US 3,683,889	HOFFMAN	8-1972
US 5,741,534	CHUNG	4-1998
JP 06-329179	YOSHIO	6-1994

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 31 and 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. This rejection is set forth in a prior Office Action, mailed on January 16, 2004.

Claims 20, 22-25, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614). This rejection is set forth in a prior Office Action, mailed on January 16, 2004.

Claim 21 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614) as applied to claims 20,22-25 and 32, further in view of Hoffman (US 3683889). This rejection is set forth in a prior Office Action, mailed on January 16, 2004.

Claims 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614) in view of Hoffman (US 3683889), as applied to claims 20,22-25 and 32, further in view of Chung (US 5741534). This rejection is set forth in a prior Office Action, mailed on January 16, 2004.

Claims 10,11, 13-15,18,30,31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614) in view of Hoffman (US 3683889). This rejection is set forth in a prior Office Action, mailed on January 16, 2004.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614) in view of Hoffman (US 3683889), as applied to claims 10,11, 13-15,18,30,31, further in view of Yoshio et al. (JP06329179). This rejection is set forth in a prior Office Action, mailed on January 16, 2004.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614) in view of Hoffman (US 3683889), as applied to claims 10,11, 13-15,18,30,31, further in view of Chung (US 5741534). This rejection is set forth in a prior Office Action, mailed on January 16, 2004.

(11) Response to Argument

Claims 31 and 33 rejected under 35 U.S.C. 112, first paragraph.

Appellant argues the plain meaning of claim 31 is that the heating element provides sufficient heat to cause the liquid to escape the first bag as a vapor in an amount sufficient to submerge a portion of a second bag and substance contained within in the bag, and the support may be found on Page 4, line 20 of the specification. The Examiner agrees that the first bag is capable of emitting vapor as described in line 20, Page 4 of the specification, but the specification does not provide support for "vapor in an amount sufficient to submerge a portion of a second bag and substance contained within in the bag". The specification discloses passing hot water (i.e. paragraph 12 of the specification on page 5) onto the second inner bag. This "passing hot water" "submerges a portion" of the second inner bag, but there is no discussion in the specification of vapor contacting, let alone submerging a portion, of the second inner bag. Appellant further cites Figures 2 and 3 as support for claim 31. While the Figures include labels to define a liquid accommodation bag (item 3), a heating element (item 6), a liquid release hole (item 2) and accommodation bag (item 7), the Figures do not include any labels to define vapor or liquid as represented by the Figures. Thus, the Figures cannot be relied on as support for the "vapor in an amount sufficient for submergence of said portion of said second inner bag and the substance contained therein" claim limitation, since the vapor is not illustrated or labeled in the Figures.

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Claims 20,22-25, and 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614).

Independent Claim 20

With respect to the vapor release hole feature of Ooyama relied on in the rejection of claim 20, Appellant disagrees that Ooyama teaches or even suggest a vapor release hole for liquid bag. In the embodiment discussed on page 14, lines 1-10, Ooyama teaches it is possible to *steam* a food product by placing the liquid bag below the food to allow *steam* generated from the liquid bag to steam the food above the liquid bag. In light of the discussion of the outer bag, *steam* is released from a bag via a hole located in an *upper* part of a bag, whereas *hot water* is released from a hole in a lower part of a bag (Page 4, line 11 to Page 5, line 7, Page14, lines 1-10). In teaching the liquid bag provides steam to heat food located above the liquid bag, Ooyama teaches the liquid bag is releasing steam or vapor. In reference to the outer bag, Ooyama teaches a vapor is released via a hole located the upper part of a bag, whereas liquid is released via a hole in the lower part of the bag. Thus Ooyama implicitly teaches the first inner bag includes a vapor release hole in the upper part of the bag in order to provide the steam for cooking the food.

Regarding the teaching of a *second* inner bag *in combination* with a first inner bag having the vapor release hole recited in claim 20, Ooyama teaches two different forms of food separating means from the first inner liquid bag (i.e. a partition sheet or a second inner bag) and two different food heating/cooking mediums discharged from the first inner bag (i.e. steam or water). Ooyama teaches a liquid bag (i.e. a first bag)

with a vapor release hole in the upper part of the first bag to steam food separated from the first bag by a mesh partition in the outer bag (as discussed in the preceding paragraph) and a liquid bag, or first bag, with a liquid release hole in the lower part of the first bag to treat a food/drink product in second inner bag with water (Page 9, line 4 to Page 10, line 9). The partition sheet and the second inner bags are made from the same material (i.e. thin -yarn net or unwoven cloth made of a synthetic resin on Page 8, lines 7-11 and Page 10, lines 19-23) and serve the same purpose: a permeable separator between a food/drink ingredient and a first liquid -containing bag in an outer bag wherein the contents of the first liquid containing bag are discharged to pass through the permeable separator to cook/heat the food/drink ingredient. Appellant argues there is no motivation to combine these separate embodiments of Ooyama because a partition sheet would be less expensive to make than a second inner bag. However, in the "partition sheet" embodiment taught by Ooyama, one may cook a food item using *either* water or steam, utilizing either a liquid release hole or vapor release hole (Page 14, lines 1-10). Modification of the first liquid containing inner bag of the "second inner bag" embodiment (described Page 9, line 4 to Page 10, line 9) would depend on the desired cooking medium (i.e. steam or boiled liquid), since Ooyama teaches in the second embodiment that one may use either liquid or vapor to heat the food/drink ingredients.

Dependent Claims 22-25 and 32

Regarding the dependent claims 22-25 and 32 in general, the rejection of claim 20 was stated in terms of the “steaming” embodiment in view of the “ liquid draining “embodiment (i.e. substituting a bag for a partition) and the liquid draining embodiment in view of the steaming embodiment (i.e. substituting a vapor releasing first inner bag for a liquid releasing first inner bag). Thus, the combination would include the features included in either embodiment. Furthermore as described below, the combination of the embodiments does not contradict the individual embodiments.

Regarding claim 23 in particular, appellant argues that the “steaming” embodiment of Ooyama does not teach a liquid drain hole for the outer bag (recited in claim 23). However, Ooyama teaches a liquid drain hole in both embodiments (e.g. item 23 in Figure 2 described on Page 7, lines 2-4 and item 71 in Figure 12 described on Page 11, 2nd paragraph).

With respect to claim 24 in particular, Appellant states that the “steaming” embodiment would not have a food bag bonded to the bottom of the outer bag since the liquid bag is placed under the food for steaming. However, Ooyama teaches the second inner bag attached in both the steaming and non-steaming embodiments. The non-steaming embodiment is described on Page 8, lines 23 and 24. With respect to the steaming embodiment, Ooyama teaches the outer bag has a top surface and bottom surface, or bottom of the bag (note item 70 of Figure 12), and the partition sheet is sealed to the bottom surface, or bottom of the bag, with the liquid bag placed below the partition sheet (Note pages 12-14 in light of Figures 10-13). Clearly, in the substitution

a second inner bag for the partition sheet holding the food product (as stated in the rejection of claim 20), the point of attachment would include the two ends of the bottom surface. Thus, the substitution of the bag for the partition sheet does not conflict with the teachings of the steaming embodiment.

Regarding claim 32, Appellant asserts that the steaming embodiment would not include the second inner bag located below the first vapor release hole of the inner bag. However, in the non-steaming embodiment the second inner bag is located below the first inner bag. In the steaming embodiment, Ooyama positions the food above the vapor release hole, presumably, so that all of the steam contacts the food before being released from the outer bag. However, Ooyama also teaches the outer bag seal is released at a given pressure (Page 5, lines 21-24) and temperature to *effectively steam/season the food for a particular time* without causing textural problems (example from Page 12 line 4 to Page 13, line 24 and Page 14 lines 1-24). In the event that a portion of the food bag, or specifically the food, were located beneath the vapor hole of the second inner bag and potentially not exposed to the all of the steam, Ooyama provides a means for assuring the entire food is cooked: the vapor release of the outer bag. Ooyama implicitly teaches it would not be required to have the food placed entirely above the vapor release hole of the first inner bag depending on the amount of steam required to heat the food and the pressure/time at which the *outer* bag vapor hole opens. Thus, it including a food bag with a portion below the vapor release hole of the liquid bag would not be incompatible with the steaming embodiment.

Claim 21 and 33 rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614) further in view of Hoffman (US 3683889).

Claim 33

Appellant argues that the references fail to disclose, teach or suggest the claimed internal heating element is configured to generate sufficient heat to cause the vapor to escape from the first inner bag in amount sufficient to submerge a portion of the second inner food bag in vapor.

Ooyama teaches external heating sources. Hoffman teaches providing an internal heating element in the liquid holding portion of a container (including a bag) wherein the purpose of the bag is to heat the liquid to penetrate an interior bag containing a solid. Hoffman teaches the internal heat source heats a liquid held in a compartment so that it can permeate a compartment proximate to the liquid compartment and hydrate a solid in the separate permeable compartment. Hoffman teaches this offers the advantage of an economical way of preparing these products without an external source of heat. (Abstract, Column 1 lines 1-63, Column 2, lines 10-24, Column 4, line 44 to Column 5, line 39). Thus, modifying Ooyama the liquid holding compartment of Ooyama would advantageously eliminate the need for an external heat source and make a more economical package. Also as discussed above, regarding claim 34 above, Ooyama teaches the heat supplied to the container generates enough heat to cause the liquid to escape as a vapor to cook the food and that the contents of the liquid bag will remain in the outer bag for a sufficient period of time for cooking. Thus, the food is "submerged" in the vapor, otherwise the food would not cook.

Appellant further asserts that the steaming embodiment of Ooyama does not require heating to emit vapor, but require heating to emit liquid that creates vapor for cooking. However, Ooyama teaches emitting vapor for heating for the reasons stated regarding claim 20 above.

Claims 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614) in view of Hoffman (US 3683889), further in view of Chung (US 5741534).

Appellant argues that Ooyama does not teach a plurality of second inner bags around the first inner bag and there is no suggestion to combine Chung with Ooyama to make up for this deficiency. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Ooyama teaches combining a two food components such as soup in the first interior bag and fish in the second inner bag. Chung also teaches preparing multi-component food products wherein the liquid seasoning component is package separately from the food component prior heating (Column 1, line 8-column 2, line 7, Column 4, lines 13-32). However, Chung teaches more than two food components (e.g. rice and vegetables) in addition to a liquid seasoning component (e.g. gravy) for a package for a consumer to cook and blend the components. Thus adding any additional second inner bags to the

outer bag of Ooyama would have depended on the recipe. Such additional bags, would have to be placed *around* and *above* the first inner bag, since Ooyama teaches the first inner bag is under the second inner bag and the second inner bag is attached to the bottom surface of the bag along the *perimeter* (i.e. where the top surface is sealed to the bottom surface) of the outer bag (as discussed above regarding claim 24).

Claims 10,11, 13-15,18,30,31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ooyama (JP 03-136614) in view of Hoffman (US 3683889).

Independent claim 10

Appellant argues that Hoffman cannot be combined with Ooyama to obtain an internal heating element installed *in* the first inner bag. However, Hoffman teaches providing an internal heating element *in* the liquid holding portion of a container (including a bag) wherein the purpose of the bag is to heat the liquid to penetrate an interior bag containing a solid. Hoffman teaches the providing an internal heat source for these types of products is conventional and offers the advantage of an economical way of preparing these products without an external source of heat. Thus, the liquid holding portion of the container of Hoffman serves the same purpose as the first inner bag of Ooyama, the interior solid containing bag of Hoffman serves the same purpose as the second inner bag of Ooyama, and the container that encompasses both the liquid container and solid containing bag of Hoffman serves the same purpose as the outer bag of Ooyama. Hoffman further teaches the element comprises two separate chemicals that react upon applying force to heat the container, as recited in claim 18

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(Abstract, Column 1 lines 1-63, Column 2, lines 10-24, Column 4, line 44 to Column 5, line 39). While Ooyama teaches external heating of the first inner bag to provide a heated liquid to treat a separately contained solid product, Hoffman teaches it is more economical to use at least two separated chemicals that react as a result of external force and the separated chemicals placed within the liquid compartment such that the liquid is heated to hydrate a solid in a separate permeable compartment. Thus, Hoffman provides motivation for the elimination of the external heating source of Ooyama and the substitution of an internal heating element installed *in* the first inner bag.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Robert Madsen
Examiner
Art Unit 1761



RAM
October 13, 2004

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